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SK USA Shirts, Inc. and Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades. Case 22–CA–122319

October 21, 2014

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND SCHIFFER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades (the Union) on February 10, 2014, the General Counsel issued the complaint on April 17, 2014, against SK USA Shirts, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On August 13, 2014, the General Counsel filed a Motion for Default Judgment with the Board. On August 14, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by May 1, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 27, 2014, notified the Respondent that unless an answer was received by June 6, 2014, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and a place of business in Garfield, New Jersey, and has been engaged in the operation of a commercial laundry. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Garfield, New Jersey facility, goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at its Garfield, New Jersey facility, except watchmen, guards, and supervisors as defined in the National Labor Relations Act.

Since about 2005, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement effective from June 1, 2013, to May 31, 2016 (the 2013–2016 agreement). At all times since about 2005, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 1, 2013, the Respondent has failed to implement a wage increase of 25 cents per hour for all unit employees as required by Article XVIII of the 2013–2016 agreement.

The subject set forth in the paragraph above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of

the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about November 1, 2013, to implement a wage increase of 25 cents per hour for all unit employees, as required by Article XVIII of the 2013–2016 agreement, we shall order the Respondent to comply with the 2013–2016 agreement and to make the unit employees whole for any losses suffered as a result of the Respondent's unlawful conduct by implementing the contractual wage increase and by paying them the wage increase retroactive to November 1, 2013. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682, 683 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, we shall order the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

ORDER

The National Labor Relations Board orders that the Respondent, SK USA Shirts, Inc., Garfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades as the exclusive collective-bargaining representative of the unit employees by failing, since about November 1, 2013, to implement a wage increase of 25 cents per hour for all unit employees as required by Article XVIII of the parties' 2013–2016 collective-bargaining agreement. The bargaining unit is:

All production and maintenance employees employed by the Respondent at its Garfield, New Jersey facility, except watchmen, guards, and supervisors as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the 2013–2016 agreement by implementing the wage increase of 25 cents per hour for all unit employees as required by Article XVIII of the 2013–2016 agreement.

(b) Make whole the unit employees by paying them retroactively the contractually-required wage increase that has not been paid to them since about November 1, 2013, with interest, as set forth in the remedy section of this decision.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in the manner set forth in the remedy section of this decision, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Garfield, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 1, 2013.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 21, 2014

Kent Y. Hirozawa,	Member
Harry I. Johnson, III,	Member
Nancy Schiffer,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades (the Union) as the exclusive collective-bargaining representative of our unit employees by failing to imple-

ment a wage increase of 25 cents per hour for all unit employees as required by Article XVIII of our 2013–2016 collective-bargaining agreement. The bargaining unit is:

All production and maintenance employees employed by us at our Garfield, New Jersey facility, except watchmen, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of our 2013–2016 collective-bargaining agreement by implementing the wage increase of 25 cents per hour for all unit employees as required by Article XVIII of the agreement.

WE WILL make whole our unit employees by paying them retroactively the contractually-required wage increase that has not been paid to them since about November 1, 2013, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

SK USA SHIRTS, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-122319 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

